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7 Attorneys for Plaintiff and the Class

8 **UNITED STATES DISTRICT COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 KHRISTIE REED, on Behalf of
 11 Herself and All Others Similarly
 Situated,

12 Plaintiff,

13 v.

14 DYNAMIC PET PRODUCTS and
 15 FRICK'S MEAT PRODUCTS, INC.,

16 Defendants.

17 Case No: **'15CV0987 WQHDHB**

18 **CLASS ACTION**

19 **CLASS ACTION COMPLAINT FOR:**

- 20 1. VIOLATION OF CONSUMERS
 21 LEGAL REMEDIES ACT, CIVIL
 22 CODE § 1750, *et seq.*;
- 23 2. VIOLATION OF THE UNFAIR
 24 COMPETITION LAW,
 25 BUSINESS AND PROFESSIONS
 26 CODE § 17200, *et seq.*;
- 27 3. BREACH OF IMPLIED
 28 WARRANTY;
4. FRAUD; and
5. NEGLIGENT
 MISREPRESENTATIONS

29 **DEMAND FOR JURY TRIAL**

1 Plaintiff Khristie Reed (“Plaintiff”), by and through her attorneys, brings this
2 action on behalf of herself and all others similarly situated against Defendants
3 Dynamic Pet Products (“Dynamic”) and Frick’s Meat Products, Inc. (“Frick’s”)
4 (collectively, Dynamic and Frick’s are referred to as “Defendants”), and states:

5 **NATURE OF THE ACTION**

6 1. This is a consumer protection class action arising out of
7 misrepresentations and omissions made by Defendants Dynamic Pet Products and
8 Frick’s Meat Products, Inc. Frick’s is a meat processor. In an effort to profit from
9 the waste resulting from the manufacture of its products, Frick’s or its principals
10 created Dynamic to sell waste ham bones to pet owners. Through Dynamic, a
11 wholly owned subsidiary of Frick’s, Defendants manufacture, market and sell the
12 Dynamic Pet Products Real Ham Bone For Dogs, an 8” hickory-smoked pork
13 femur, as an appropriate and safe chew toy for dogs. Indeed, on each product label
14 Defendants clearly state that this is a “Dynamic Pet Products Real Ham Bone For
15 Dogs.”

16 2. The Real Ham Bone For Dogs is not appropriate for dogs and is not
17 safe for its intended purpose, despite Defendants’ contrary representations. When
18 chewed, Real Ham Bones For Dogs are prone to splintering into shards, which then
19 slice through dogs’ digestive systems. Thousands of dogs have suffered a terrible
20 array of illnesses, including stomach, intestinal and rectal bleeding, vomiting,
21 diarrhea, constipation and seizures, and have died gruesome, bloody deaths as a
22 result of chewing Defendants’ Real Ham Bone For Dogs.

23 3. Defendants have known as early as 2006 that the Real Ham Bone For
24 Dogs is not safe or appropriate for dogs. Over the past nine years, thousands of
25 consumers have complained directly to Defendants about the horrible injuries that
26 their pets have suffered after chewing on the Real Ham Bone For Dogs.
27 Responding to public outcry, in 2010 the Missouri Better Business Bureau alerted
28 Defendants about the numerous complaints it received.

1 4. Also in 2010, similarly responding to customer complaints, the Food
2 and Drug Administration issued a notice that bones such as the Real Ham Bone For
3 Dogs are not suitable for dogs. The FDA found that “bones are unsafe for your
4 dog” and that giving bones to dogs is a “dangerous practice and can cause serious
5 injury.” These injuries, the FDA noted, include pieces of bone becoming lodged in
6 the dog’s esophagus, windpipe, stomach, or intestines, constipation, severe bleeding
7 from the rectum, and deadly bacterial infections.

8 5. Despite knowing that the Real Ham Bone For Dogs is dangerous and
9 not appropriate for dogs, Defendants expressly and impliedly represented and
10 continue to represent on the label of each Real Ham Bone for Dogs and on
11 Dynamic's website and other marketing that the Real Ham Bone For Dogs is "safe
12 for your pet" and is "meant to be chewed." As a result of Defendants'
13 misrepresentations, Plaintiff and the proposed Class have purchased a product that is
14 other than that which they thought they were purchasing and one which is not fit for
15 its intended purpose.

16 6. Plaintiff brings this action on behalf of herself and other consumers
17 who have purchased Real Ham Bone For Dogs. Plaintiff seeks redress and an
18 injunction preventing Defendants from marketing the Real Ham Bone For Dogs to
19 consumers as an appropriate chew toy for dogs or, at a minimum, requiring
20 Defendants to meaningfully inform consumers about the dangers and
21 inappropriateness of giving this product to dogs.

JURISDICTION AND VENUE

23 7. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).
24 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
25 of \$5,000,000 and is a class action in which there are in excess of 100 class
26 members and many members of the class are citizens of a state different from
27 Defendants.

1 8. This court has personal jurisdiction over Defendants because Dynamic
2 and Frick's are authorized to conduct business and do conduct business in
3 California. Defendants have marketed, promoted, distributed, and sold the Real
4 Ham Bone For Dogs in California and have sufficient minimum contacts with this
5 State and/or have sufficiently availed themselves of the markets in this State through
6 their promotion, sales, distribution, and marketing, to render the exercise of
7 jurisdiction by this Court permissible.

8 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
9 because a substantial part of the events or omissions giving rise to the claim
10 occurred because Plaintiff purchased the Real Ham Bone For Dogs in this judicial
11 district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendants
12 transact substantial business in this District.

PARTIES

14 10. Plaintiff Khristie Reed resides in Vista, California. On Sunday, March
15 1, 2015, Plaintiff purchased an individually packaged Dynamic Pet Products Real
16 Ham Bone For Dogs from Wal-Mart in Oceanside, California, paying \$3.48.
17 Plaintiff found the product in the pet toys aisle, the area of the store in which
18 Defendants intended the product to be sold. Prior to making the purchase, Plaintiff
19 read the label for the Real Ham Bone For Dogs. The label stated expressly and
20 impliedly that the Real Ham Bone For Dogs was meant for dogs and was safe for
21 dogs to chew on. The label omitted material information about the safety of the
22 Real Ham Bone For Dogs, including that it was not appropriate for dogs and that
23 dogs who chewed on it were subjected to serious health risks, including death. In
24 reliance on the express and implied representations, unaware of the material omitted
25 facts, and based on her reasonable expectation that it was safe for her dog, Plaintiff
26 purchased the Real Ham Bone For Dogs.

1 11. When Plaintiff returned home from Wal-Mart, she gave the Real Ham
2 Bone For Dogs to Fred, her healthy nine-year-old basset hound. Plaintiff watched
3 Fred chew on the Real Ham Bone For Dogs for approximately one hour, after which
4 point Fred walked away and did not chew on it again. The next day, Monday March
5 2, 2015, Fred was lethargic and vomiting blood. Plaintiff immediately rushed Fred
6 to California Veterinary Specialists in Carlsbad, California. The veterinarian told
7 Plaintiff that Fred was gravely ill and there was no guarantee that surgery would
8 save him. According to the veterinarian, the only way to alleviate Fred's suffering
9 was to put him to sleep. Plaintiff took the veterinarian's advice and Fred was
10 euthanized that evening. Had Plaintiff known the truth about the Real Ham Bone
11 For Dogs, Plaintiff would not have purchased the product and would not have given
12 it to her dog. As a direct result of Defendants' conduct as described herein, Plaintiff
13 purchased an unsafe product that she reasonably believed to be safe and suffered
14 injury in fact and lost money and property.

15 12. Defendant Dynamic Pet Products is a Missouri Corporation with its
16 headquarters located at 360 M E Frick Dr., Washington, MO 63090-1050. Dynamic
17 is in the business of manufacturing and selling chew toys for dogs and holds itself
18 out to the public as a manufacturer of safe, high-quality pet products. Dynamic has
19 sold the Real Ham Bone For Dogs since 2001. The Real Ham Bone For Dogs is
20 Dynamic's "number one seller." Dynamic has marketed, distributed, and sold the
21 Real Ham Bone For Dogs to many thousands of consumers in the United States
22 through nationwide retailers such as Wal-Mart, Sam's Club, H.E.B., and Dollar
23 General. Dynamic also sells the Real Ham Bone For Dogs directly to consumers
24 nationwide through direct sales websites such as www.walmart.com and
25 www.heb.com, and its own website, www.dynamicpet.net. Dynamic's website is a
26 virtual store where consumers can view descriptions and pictures of the products,
27 make purchases and have items shipped directly to them. On its website, Dynamic
28 charges consumers \$36.00 for a case of 12 Real Ham Bone For Dogs, or \$72.00 for

1 || a case of 24.

2 13. Defendant Frick's Meat Products, Inc. is a Missouri Corporation with
3 its headquarters at the same location as Dynamic's, 360 M E Frick Dr., Washington,
4 MO 63090-1050. Frick's Meat Products Inc. is a major meat product manufacturer
5 and supplies sausages and other prepared meats to food retailers nationwide. As a
6 nationwide distributor, Frick's generates considerable slaughter house waste, *i.e.*,
7 the bones and trimmings of a slaughtered animal that cannot be sold as meat or used
8 in meat-products. In an effort to profit from the waste resulting from the
9 manufacture of its products, Frick's knowingly and intentionally supplies Dynamic
10 with bones for the purpose of selling them as the Real Ham Bone For Dogs.
11 Dynamic and Frick's share the same ownership, management and headquarters and
12 are the alter egos of one another. Frick's and Dynamic work in concert with each
13 other to profit off the sale of waste ham bones, marketing them to pet owners as safe
14 and appropriate chew toys for dogs, when they are not.

FACTUAL ALLEGATIONS

16 14. In an effort to profit from the waste resulting from the manufacture of
17 its products, Frick's, or its principals, created Dynamic to sell waste ham bones to
18 pet owners, marketing them as appropriate and safe for dogs. Through Dynamic,
19 Defendants manufacture, market and sell the Real Ham Bone For Dogs, an 8"
20 hickory-smoked pork femur, as a chew toy for dogs. On each label, Defendants
21 clearly state that this is "for dogs."

22 15. In reality, the Real Ham Bone For Dogs is not appropriate for dogs and
23 is not safe for its intended purpose, despite Defendants' contrary representations.
24 When chewed, the Real Ham Bone For Dogs is prone to splintering into shards,
25 which then slice through the dog's digestive system. Thousands of dogs have
26 suffered a terrible array of illnesses, including stomach, intestinal and rectal
27 bleeding, vomiting, diarrhea, constipation and seizures, and have died gruesome,
28 bloody deaths as a result of chewing Defendants' Real Ham Bone For Dogs.

1 16. Defendants knew (or should have known) for many years that the Real
2 Ham Bone For Dogs posed an unreasonable risk of harm to Plaintiff and the
3 proposed Class members' dogs. Since 2006, consumers have complained to
4 Dynamic directly and posted thousands of complaints to online forums after their
5 pets became ill or died after chewing on the Real Ham Bone For Dogs. The
6 complaints evince a common and continuing danger, of which Defendants are fully
7 aware, that Defendants have failed to warn consumers about.

- 8 • On March 22, 2015, a dog owner reported: "I bought this horrible bone at
9 caputo's market...over the weekend and now my poor dog Diva is suffering
10 cause of this bone. I discovered her in shock and couldn't move. She puked
11 and had Diarrhea and couldn't stand up. So we rushed her to the vet. She has
12 spent 3 days in the hospital on iv's, pain meds, antibiotics and had a fever
13 trying to pass this deadly bone. A week later we had to bring her back and
14 now waiting to see how she improves. So far vet bills are over \$2400."
- 15 • On March 21, 2015, another dog owner reported: "We had bought a Dynamic
16 Pet Real Ham bone at Walmart the other day. The next day he went outside
17 to go to the bathroom and I heard a scream like he was being killed. I ran to
18 go see what was wrong, my poor dog was so bound up with the bone his poop
19 was stuck and he could not pass it. That was 3 days ago. He is still not better
20 he is having a hard time going to the bathroom and vomiting."
- 21 • On March 11, 2015, another dog owner reported: "On February 21, 2015 I
22 bought a dynamic ham bone for my dog, Checkers. I gave it to him. Within
23 8 hrs he was throwing up, panting, pacing, and having diarrhea. I rushed him
24 to the vet they xrayed him and found bone splinters in his stomach. He
25 needed IV therapy for a couple of days, powerful pain medication, and
26 antibiotics and be on a special diet. I knew cooked bones aren't good for
27 dogs but I thought if they sell it in the pet section that it must be safe. It won't
28 splinter. Well I was wrong."
- 29 • On March 8, 2015, another dog owner reported: "My fiancé bought this real
30 ham bone for our 9 month puppy to occupy her time on Friday March 6,
31 2015. On Saturday, March 7 at 3 AM, I woke up to see my puppy in her own
32 urine in her crate (she has never made a mess in her crate). That Saturday
33 afternoon, she could not make it outside to poop and ended up pooping on the
34 floor in the house and I immediately took her outside where she had Diarrhea.
35 It is now Sunday and she has had diarrhea and vomiting and has done it all
36 over the house. I have been up all night taking care of my puppy."

- 1 • On October 27, 2014, another dog owner reported: "On Friday October 24,
2 2014, I purchased a Dynamic Femur Bone for my dog. Although I joyfully
3 watched her enjoy the product, it was not less than 6 hours later that my dog
4 became sick. She started vomiting throughout Friday night and all day
5 Saturday. On Saturday night she suffered her first seizure. Saturday night
6 she was also blessed to have bloody stools. On Sunday another seizure."
7
- 8 • On June 18, 2013, another dog owner reported: "My son brought home 3 of
9 these bones, one for each dog. The two black labs ended up throwing them
10 up, lots of bone fragments. However, our 5 year old golden retriever was not
11 as lucky. They messed up her whole insides. After losing about 3 gallons of
12 blood through the rectum and a \$400 vet bill..."
13
- 14 • On April 1, 2013, another dog owner reported: "I bought this ham bone from
15 Dollar General yesterday and gave it to my American bulldog (which is in a
16 very good health). An hour later, he was vomiting pieces of the bone. That
17 was all in his vomit. So the next morning, we went to check on him and he
18 was laid over on his side—foaming, having convulsions, urinating on
19 himself. He vomited on his bed and all over the ground in the garage and his
20 eyes were opened in agony. We took him to the vet emergency hospital
21 where he is there now and might not make it. We have to pay \$564..."
22
- 23 • On February 1, 2012, another dog owner reported: "I recently purchased a
24 Dynamic Ham Bone from the local Dollar General store for \$3.00. I gave it
25 to my dog Sunday night 1/29 and by the following morning, he was in pain.
26 He was dripping blood from his bottom and constipated. I carried him to the
27 vet and she tried to dislodge the bones. She did get them out but it was too
28 late. My beloved pet was in such distress. She kept him overnight on an IV
 and some type hotplate to try and bring his temperature back up but he didn't
 pull through."
29
- 30 • On January 24, 2012, another dog owner reported: "On December 6, 2011,
31 we gave our beloved Sadie a Dynamic Ham Bone. By morning she was very
32 ill. By 6:30 pm, we were told by our vet that she died! Hours before she was
33 running around playing, so excited that we got her a treat. Little did I know it
34 would be her last!"
35
- 36 • On December 22, 2010, another dog owner reported: "We bought a couple of
37 their ham bone treats for the dogs on Saturday, December 11. By Monday,
38 December 13, my 4 year old chocolate labrador was dead and my 6 year old
39 rottweiler was ill and in the hospital. We have all the information and facts
40 from the Veterinarian. My \$1500.00 labrador and great friend is dead and
41 \$1400.00 spent on veterinary bills for the rottweiler."
42

- 1 • On July 9, 2010, another dog owner reported: "On July 6 2010 I purchased a
2 Dynamic Pet ham bone. On July 7th I found my dog, Jake (Pit Bull Terrier),
3 dead in a pool of blood the next morning. I had no idea this bone was the
4 case until my other dog was throwing up chards of bone."
- 5 • On March 6, 2009, another dog owner reported: "I bought a Real Ham Bone
6 made by Dynamic Pet Products of Missouri from Walmart...Trace, my dog,
7 enjoyed chewing on this bone. It did not splinter or anything, in fact there is
8 quite a large piece of it still left. Then in the evening she started vomiting.
9 She spent the next day at a veterinarian's office where she was diagnosed
10 with a blockage of the colon. That night she endured a 4 hour surgery at
11 Brandon Veterinary Specialists where the vet picked out small round pellets
12 of the bone, up to the size of about a b-b. The next morning she was moved
13 to Florida Veterinary Specialist critical care unit. Again in the evening she
14 had another 2 hour surgery, because the blockage had caused poison in her
15 body. She passed away at 4:30 the next afternoon...My vet bills were
\$14,000."
- 16 • On August 15, 2006, another dog owner reported: "Packaged dog ham bone
17 lodged in my dogs intestines from inside his stomach [sic] to the length of his
18 intestines. Chewed bone particles cemented together and prevented dog from
19 excreting waste. Dog was vomiting and unable excrete waste though he tried.
20 Two times in emergency [sic] room for xrays & emimas.[sic]"

21 17. In 2010, the FDA issued a statement against giving bones to dogs as
22 chew toys. The FDA found that "[b]ones are unsafe no matter what their size.
23 Giving your dog a bone may make your pet a candidate for a trip to your
24 veterinarian's office later, possible emergency surgery, or even death." According
25 to the 2010 FDA statement, the risks associated with giving bones to dogs include
bone or splinters of bone becoming lodged in the esophagus or windpipe obstructing
breathing, intestinal blockages and gastroenterological complications, bacterial
infections, intestinal lacerations, and severe rectal bleeding. These injuries are so
severe that they often require immediate and costly veterinarian care or emergency
surgeries to attempt to prevent an agonizing and bloody death.

26 18. Five years ago, based on consumer complaints it received, the Missouri
27 Better Business Bureau specifically warned Defendants about the dangers posed by
28 their Real Ham Bone For Dogs product. Defendants ignored this notice.

1
2 19. After receiving reports from customers about the dangers of the Real
3 Ham Bone For Dogs, some retailers dropped the product from their inventory and
4 refused to sell them, squarely placing Defendants on notice of the dangers posed by
5 the Real Ham Bone For Dogs.

6 20. As the manufacturer and distributor of the Real Ham Bone For Dogs,
7 Defendants nonetheless expressly and impliedly represented that their particular
8 product was safe and appropriate for dogs. Further, as the suppliers and
9 manufacturers of Real Ham Bone For Dogs, Defendants are in a superior position to
10 investigate possible risks associated with the Real Ham Bone For Dogs.

11 21. Despite having knowledge that Real Ham Bones For Dogs is inherently
12 dangerous for dogs, Defendants represent the opposite. None of instructions on the
13 product's packaging or in other marketing informed Plaintiff or other consumers
14 that allowing dogs to chew on the Real Ham Bone For Dogs as instructed on the
15 labeling nonetheless poses a significant risk of serious illness or death. Nowhere do
16 Defendants state the truth – that the Real Ham Bone For Dogs is a dangerous
17 product that should not be given to dogs. Instead of properly warning consumers of
18 the true facts and removing it from store shelves, Defendants continue to falsely
19 represent that the Real Ham Bone For Dogs is “safe for your pet,” while engaging in
20 a secret warranty program by paying off pet owners who persistently pursued their
21 complaint, offering them refunds or paying their vet bills to keep them quiet.

22 22. As a result of Defendants' omissions and representations, Plaintiff and
23 the Class members purchased an inherently unsafe and dangerous product that is
24 other than as advertised and has caused many Class members, including Plaintiff, to
25 incur costly veterinarian bills and, tragically, to lose their pets.

26 23. Defendants advertised the Real Ham Bone For Dogs as a safe product
27 and failed to warn consumers that the Real Ham Bone For Dogs may cause serious
28 bodily harm or death to their dogs. Plaintiff and Class members purchased the Real

1 Ham Bone For Dogs reasonably believing that the product was safe for its intended
2 purpose.

3 24. The dangers presented by the Real Ham Bone For Dogs is a material
4 fact. The defect poses an unreasonable risk of harm to consumers' dogs and
5 Plaintiff would not have purchased the product had she known that it was dangerous
6 and could cause serious bodily harm or kill her dog.

7 25. Defendants' omissions and misrepresentations were a material factor in
8 influencing Plaintiff's decision to purchase the Real Ham Bone For Dogs and
9 Defendants reaped, and continue to reap, large profits from their deceptive
10 marketing and sale of Real Ham Bones For Dogs.

11 CLASS DEFINITION AND ALLEGATIONS

12 26. Plaintiff brings this action on behalf of herself and all others similarly
13 situated pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
14 Procedure and seeks certification of the following class:

15 All persons who purchased one or more Real Ham Bone For Dogs
16 other than for purpose of resale.

17 27. Excluded from the Class are Defendants, their parents, subsidiaries,
18 affiliates, officers and directors.

19 28. Members of the Class are so numerous and geographically dispersed
20 that joinder of all Class members is impracticable. Plaintiff is informed and
21 believes, and on that basis alleges, that the proposed Class contains many thousands
22 of members. The precise number of Class members is unknown to Plaintiff.

23 29. Common questions of law and fact exist as to all members of the Class
24 and predominate over questions affecting only individual Class members. The
25 common legal and factual questions include, but are not limited to, the following:

26 i. Whether Defendants' Real Ham Bone For Dogs are unmerchantable
27 because they present a danger and medical hazard when used in
28 accordance with their label instructions;

- 1
- 2 ii. Whether Defendants knew or should have known the Real Ham Bone
- 3 For Dogs cause harm to Class members and their dogs;
- 4 iii. Whether Defendants knew or should have known that the Real Ham
- 5 Bone For Dogs are inherently dangerous and can cause serious injury
- 6 in the normal course of use;
- 7 iv. Whether Defendants have a duty to inform Plaintiff and Class
- 8 members that the Real Ham Bone For Dogs may cause harm to Class
- 9 members and their dogs;
- 10 v. Whether Defendants' omissions or representations concerning the
- 11 safety and appropriate uses of the Real Ham Bone For Dogs are likely
- 12 to deceive;
- 13 vi. Whether Defendants' alleged conduct violates public policy;
- 14 vii. Whether the alleged conduct constitutes violations of the laws asserted
- 15 herein;
- 16 viii. Whether Defendants engage in false or deceptive advertising;
- 17 ix. Whether Plaintiff and Class members have sustained monetary loss
- 18 and the proper measure of that loss;
- 19 x. Whether Plaintiff and Class members are entitled to restitution,
- 20 disgorgement of Defendants' profits, declaratory or injunctive relief;
- 21 and
- 22 xi. Whether Plaintiff and Class members are entitled to an award of
- 23 compensatory damages.

24 30. The claims asserted by Plaintiff in this action are typical of the claims
25 of the members of the Class, as the claims arise from the same course of conduct by
26 Defendants, and the relief sought is common.

27 31. Plaintiff will fairly and adequately represent and protect the interests of
28 the members of the Class. Plaintiff has retained counsel competent and experienced

1 in both consumer protection and class litigation.

2 32. A class action is superior to other available methods for the fair and
3 efficient adjudication of this controversy. The expense and burden of individual
4 litigation would make it impracticable or impossible for proposed class members to
5 prosecute their claims individually. It would thus be virtually impossible for the
6 class, on an individual basis, to obtain effective redress for the wrongs done.
7 Furthermore, even if class members could afford such individualized litigation, the
8 court system could not. Individualized litigation would create the danger of
9 inconsistent or contradictory judgments arising from the same set of facts.
10 Individualized litigation would also increase the delay and expense to all parties and
11 the court system from the issues raised by this action. By contrast, the class action
12 device provides the benefits of adjudication of these issues in a single proceeding,
13 economies of scale, and comprehensive supervision by a single court, and presents
14 no unusual management difficulties under the circumstances here.

15 33. In the alternative, the Class also may be certified because Defendants
16 have acted or refused to act on grounds generally applicable to the Class thereby
17 making final declaratory or injunctive relief with respect to the members of the
18 Class as a whole appropriate.

19 34. Plaintiff seeks preliminary and permanent injunctive and equitable
20 relief on behalf of the entire Class, on grounds generally applicable to the entire
21 Class, to enjoin and prevent Defendants from engaging in the acts described, and to
22 require that Defendants provide full restitution to Plaintiff and Class members.

23 35. Unless a class is certified, Defendants will retain monies that were
24 taken from Plaintiff and Class members as a result of Defendants' wrongful
25 conduct. Unless a classwide injunction is issued, Defendants will continue to
26 commit the violations alleged and the members of the Class and the general public
27 will continue to be harmed and misled.

28

1 **COUNT I**2 **Violation of the Consumers Legal Remedies Act**3 **Cal. Civ. Code § 1750, *et seq.***

4 36. Plaintiff re-alleges and incorporates by reference the allegations
 5 contained in the paragraphs above as if fully set forth herein.

6 37. This cause of action is brought under the Consumers Legal Remedies
 7 Act, California Civil Code § 1750, *et seq.* (the “Act”). Plaintiff is a consumer as
 8 defined by California Civil Code § 1761(d). The Real Ham Bone For Dogs is a
 9 “good” within the meaning of the Act.

10 38. Defendants violated and continue to violate the Act by engaging in the
 11 following practices proscribed by California Civil Code § 1770(a) in transactions
 12 with Plaintiff and the Class which were intended to result in, and did result in, the
 13 sale of the Real Ham Bone For Dogs:

14 (5) Representing that goods or services have... approval, characteristics,... uses [or] benefits ... which [they do] not have

15 * * *

16 (7) Representing that goods or services are of a particular standard, quality
 17 or grade... if [they are] of another.

18 * * *

19 (9) Advertising goods... with intent not to sell them as advertised.

20 * * *

21 (16) Representing that goods or services have been supplied in accordance
 22 with a previous representation when [they have] not.

23 39. Defendants violated and continue to violate the Act by making the
 24 express and implied representations and by failing to disclose material facts as
 25 described above when they knew, or should have known, that the use of the Real
 26 Ham Bone For Dogs cause harm to Class members and their dogs. Defendants
 27 further violated the Act by representing on the product packaging and other
 28 marketing material that the Real Ham Bone For Dogs is “safe for your pet” and is
 “meant to be chewed.”

40. Pursuant to § 1782(d) of the Act, Plaintiff and the Class seek a court order enjoining Defendants' above-described wrongful acts and practices and for restitution and disgorgement.

41. Pursuant to § 1782 of the Act, Plaintiff notified Defendants in writing by certified mail of the particular violations of § 1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to so act. Copies of the letters are attached as Exhibit A. If Defendants fail to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to § 1782 of the Act, Plaintiff will amend this complaint to add claims for damages, as appropriate.

42. Defendants' conduct is malicious, fraudulent and wanton.

43. Pursuant to § 1780(d) of the Act, attached as Exhibit B is the affidavit providing that this action has been commenced in the proper forum.

COUNT II

Violations of Business & Professions Code § 17200, *et seq.*

44. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

45. In the course of conducting business, Defendants committed unlawful business practices by, *inter alia*, omitting and/or misrepresenting material facts concerning the safety and integrity of the Real Ham Bone For Dogs, making representations (which also constitute advertising within the meaning of § 17200 and § 17500) as set forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) under the CLRA, Business & Professions Code §§ 17200, *et seq.*, 17500, *et seq.*, and the common law, including breach of implied warranty. Defendants' above-described wrongful acts and practices constitute actual and constructive fraud within the meaning of Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil Code §§ 1709 and 1711.

1 46. Plaintiff and the Class reserve the right to allege other violations of
2 law, which constitute other unlawful business acts or practices. Such conduct is
3 ongoing and continues to this date.

4 47. Defendants' omissions, non-disclosures, acts, misrepresentations, and
5 practices as alleged herein also constitute "unfair" business acts and practices within
6 the meaning of Business and Professions Code § 17200 *et seq.*, in that their conduct
7 is substantially injurious to consumers, offends public policy, and is immoral,
8 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any
9 alleged benefits attributable to such conduct.

10 48. As stated in this complaint, Plaintiff alleges violations of consumer
11 protection, unfair competition and truth in advertising laws resulting in harm to
12 consumers. Plaintiff asserts violations of the public policy of engaging in false and
13 misleading advertising, unfair competition and deceptive conduct towards
14 consumers. This conduct constitutes violations of the unfair prong of Business &
15 Professions Code § 17200, *et seq.*

16 49. There were reasonably available alternatives to further Defendants'
17 legitimate business interests, other than the conduct described herein.

18 50. Defendants' claims, nondisclosures and misleading statements, as more
19 fully set forth above, are also false, misleading and/or likely to deceive the
20 consuming public within the meaning of Business & Professions Code § 17200, *et
seq.*

22 51. Defendants' labeling and packaging as described herein, also
23 constitutes unfair, deceptive, untrue and misleading advertising.

24 52. Defendants' conduct caused and continues to cause substantial injury to
25 Plaintiff and the other Class members.

26 53. Plaintiff, on behalf of herself, and all other similarly situated Class
27 members, seeks restitution of all money obtained from Plaintiff and the members of
28 the Class as a result of Defendants' unfair competition, an injunction prohibiting

1 Defendants from continuing such practices, corrective advertising, and all other
2 relief this court deems appropriate, consistent with Business & Professions Code
3 § 17203.

4 **COUNT III**

5 **Breach of Implied Warranty**

6 54. Plaintiff re-alleges and incorporates by reference the allegations
7 contained in the paragraphs above as if fully set forth herein.

8 55. The Uniform Commercial Code § 2-314 provides that, unless excluded
9 or modified, a warranty that the goods shall be merchantable is implied in a contract
10 for their sale if the seller is a merchant with respect to goods of that kind.

11 56. California has adopted the provisions the Uniform Commercial Code
12 governing the implied warranty of merchantability. Cal. Comm. Code § 2314.

13 57. Defendants' Real Ham Bone For Dogs is a "good" as defined in the
14 California commercial code governing the implied warranty of merchantability.

15 58. As a designer, manufacturer, producer, marketer, and seller of the Real
16 Ham Bone For Dogs, Defendants are "merchants" within the meaning of the various
17 states' commercial codes governing the implied warranty of merchantability.

18 59. By placing the Real Ham Bone For Dogs in the stream of commerce,
19 Defendants impliedly warranted that the Real Ham Bone For Dogs is reasonably
20 safe, effective and adequately tested for its intended use and that it is of
21 merchantable quality.

22 60. As merchants of the Real Ham Bone For Dogs, Defendants knew that
23 purchasers relied upon them to manufacture, test and sell a product that is
24 reasonably safe. In fact, members of the public, including Plaintiff, reasonably
25 relied upon Defendants' skill and judgment and upon said implied warranties in
26 purchasing the Real Ham Bone For Dogs.

27 61. Plaintiff and the Class members purchased the Real Ham Bone For
28 Dogs to be used for its intended purpose.

62. In breach of its implied warranty, the Real Ham Bone For Dogs is not safe and not merchantable because it is dangerous and may cause harm to Class members and their dogs.

63. The Real Ham Bone For Dogs was not reasonably safe for its intended use when it left Defendants' control and entered the market.

64. The Real Ham Bone For Dogs' dangers were not open or obvious to consumers, including Plaintiff and the Class, who could not have known about the nature of the risks associated with the Real Ham Bone For Dogs until after consumers gave the product to their dog.

65. All conditions precedent to Defendants' liability under this contract, including notice, have been performed by Plaintiff and the Class.

66. Defendants created the advertising at issue and warranted the Real Ham Bone For Dogs to consumers directly and/or through the doctrine of agency. Further, Defendants knew the identity, purpose and requirements of Plaintiff and members of the Class and manufactured the Real Ham Bone For Dogs to meet their requirements.

67. As a direct and proximate result of Defendants' breach of implied warranties, Plaintiff and Class members have sustained injuries by purchasing the Real Ham Bone For Dogs. Plaintiff and Class members are entitled to judgment and equitable relief against Defendants, as well as restitution, including all monies paid for the Real Ham Bone For Dogs, disgorgement of profits that Defendants received from sales of the Real Ham Bone For Dogs, attorneys' fees, punitive damages, and costs, as set forth in the Prayer for Relief.

COUNT IV

Fraud

68. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

1 69. Defendants have known for many years that the Real Ham Bone For
2 Dogs was dangerous for dogs because it posed a significant risk of severe or deadly
3 injury to dogs. Defendants had actual knowledge of these risks at the time of sale to
4 Plaintiff and Class members.

5 70. As such, Defendants were under a duty and failed to discharge their
6 duty to exercise reasonable care to not make misrepresentations about the product,
7 including that this product was appropriate for dogs. They also had a duty to
8 disclose to Plaintiff and members of the Class the true facts about Real Ham Bone
9 for Dogs. As the manufacturer, marketer and distributor of Real Ham Bone For
10 Dogs, Defendants had special knowledge of the hazards associated with the Real
11 Ham Bone For Dogs, which was not reasonably available to Plaintiff and members
12 of the Class. Defendants made affirmative representations in violation of the
13 applicable laws and actively concealed material facts relating to the dangerous
14 nature of the Real Ham Bone For Dogs, knowing that Plaintiff and Class members
15 would rely on the presumption that no such facts exist.

16 71. By purchasing a product that was not as represented, Plaintiff and Class
17 members did in fact rely upon Defendants' representations, including the product's
18 packaging at the time they purchased the Real Ham Bone For Dogs. Plaintiff and
19 Class members justifiably relied on these representations to their detriment and/or
20 were induced by Defendants' false statements and active concealment over the
21 safety of the Real Ham Bone For Dogs, in part, because at no time did Plaintiff and
22 Class members have the knowledge or expertise necessary to independently
23 evaluate the safety of the product.

24 72. Plaintiff and Class members could not have discovered Defendants'
25 fraudulent and misleading conduct at an earlier date through the exercise of
26 reasonable diligence because Defendants actively concealed their deceptive,
27 misleading and unlawful activities.

1 73. Defendants' misrepresentations, concealment, suppression and
2 omissions were made in order to induce Plaintiff and Class members to purchase the
3 Real Ham Bone For Dogs. Plaintiff and Class members did just that and reasonably
4 and justifiably relied upon the material misrepresentations and omissions made by
5 Defendants when agreeing to purchase the product and permitting their dogs to
6 chew on it.

7 74. As a direct and proximate result of Defendants' false representations of
8 material facts regarding the safety and efficacy of the Real Ham Bone For Dogs,
9 dogs belonging to Plaintiff and Class members sustained severe and debilitating
10 injuries and many died. Plaintiff and Class members have suffered additional
11 damages including, but not limited to, costs of medical care, rehabilitation, mental
12 anguish and pain and suffering, for which they are entitled to compensatory
13 damages.

14 75. At all times relevant hereto, Defendants actually knew of the defective
15 nature of the products as herein set forth and continued to manufacture, market and
16 sell the products so as to maximize sales and profits at the expense of public health
17 and safety, including the health and safety of dogs. Defendants' conduct exhibits a
18 wanton or reckless disregard and a want of care as to establish that their actions
19 were a result of fraud, evil motive, actual malice, and the conscious and deliberate
20 disregard of foreseeable harm to Plaintiff and Class members, as well as their dogs.
21 Therefore, Plaintiff and Class members are entitled to punitive damages.

COUNT V

Negligent Misrepresentations

24 76. Plaintiff re-alleges and incorporates by reference the allegations
25 contained in the paragraphs above as if fully set forth herein.

26 77. Defendants owed Plaintiff and the Class a duty to exercise reasonable
27 care in representing that the Real Ham Bone For Dogs was safe and appropriate for
28 dogs.

78. Defendants knew or should have known for many years that the Real Ham Bone For Dogs posed a serious risk of injury or death to dogs. Despite this knowledge, Defendants misrepresented that the Real Ham Bone For Dogs was safe and appropriate for dogs.

79. Defendants had superior knowledge and information regarding the risks associated with the Real Ham Bone For Dogs. Plaintiff and Class Members did not have access to this information.

80. Defendants' representation and omission concern issues material to the transaction in question. Defendants intended for Plaintiff and the Class rely on its representations that the Real Ham Bone For Dogs was safe for use. Had Plaintiff and the Class known that use of the Real Ham Bone For Dogs could result in serious injury or death to their dogs, they would not have purchased the product.

81. The foregoing misrepresentations and practices proximately caused Plaintiff and the Class members to suffer damages in that they purchased the Real Ham Bone For Dogs without knowing that the alleged express and implied claims about the product were false.

82. As a proximate cause of Defendant's false representations, Plaintiff and the Class members suffered injury to property, specifically in the illness and deaths of their pets and associated expenses, and continue to suffer damages. Plaintiff seeks compensatory damages in an amount to be proven at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

A. Certifying the Class as requested herein;

B. Awarding Plaintiff and the proposed class members damages, including punitive damages;

C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the proposed Class members;

D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;

E. Ordering Defendants to engage in a corrective advertising campaign;

F. Awarding attorneys' fees and costs; and

G. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: May 1, 2015

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